

**KAZEROUNI LAW GROUP, APC**

Abbas Kazerounian, Esq. (SBN: 249203)

ak@kazlg.com

Matthew M. Loker, Esq. (SBN: 279939)

ml@kazlg.com

245 Fischer Avenue, Unit D1

Costa Mesa, CA 92626

Telephone: (800) 400-6808

Facsimile: (800) 520-5523

**HYDE & SWIGART**

Joshua B. Swigart, Esq. (SBN: 225557)

josh@westcoastlitigation.com

2221 Camino Del Rio South, Suite 101

San Diego, CA 92108

Telephone: (619) 233-7770

Facsimile: (619) 297-1022

*Attorneys for Plaintiff,*

Scott Wiederhold

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**SCOTT WIEDERHOLD,  
INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

Plaintiff,

v.

**CONSOLIDATED WORLD  
TRAVEL INC. dba HOLIDAY  
CRUISE LINE,**

Defendant.

**Case No.:**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF PURSUANT  
TO THE TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C. § 227,  
ET SEQ.**

**JURY TRIAL DEMANDED**

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## INTRODUCTION

1. SCOTT WIEDERHOLD (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of CONSOLIDATED WORLD TRAVEL INC. dba HOLIDAY CRUISE LINE (“Defendant”), in negligently or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
  2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
  3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that
- [b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

1 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL  
2 3292838, at\* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s  
3 purpose).

4 4. Congress also specifically found that “the evidence presented to the  
5 Congress indicates that automated or prerecorded calls are a nuisance and an  
6 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See  
7 also, *Mims*, 132 S. Ct. at 744.

8 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA  
9 case regarding calls to a non-debtor similar to this one:

10 The Telephone Consumer Protection Act ... is well known for  
11 its provisions limiting junk-fax transmissions. A less-litigated  
12 part of the Act curtails the use of automated dialers and  
13 prerecorded messages to cell phones, whose subscribers often  
14 are billed by the minute as soon as the call is answered—and  
15 routing a call to voicemail counts as answering the call. An  
16 automated call to a landline phone can be an annoyance; an  
17 automated call to a cell phone adds expense to annoyance.

18 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

#### 19 JURISDICTION AND VENUE

20 6. This Court has federal question jurisdiction because this case arises out of  
21 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,  
22 132 S. Ct. 740 (2012).

23 7. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)  
24 Plaintiff resides in the County of San Luis Obispo, State of California which  
25 is within this judicial district; (ii) the conduct complained of herein occurred  
26 within this judicial district; and, (iii) Defendant conducted business within  
27 this judicial district at all times relevant.

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**PARTIES**

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the County of San Luis Obispo, State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 277(a)(2)(A).
9. Defendant is a national cruise sales company and is a “person” as defined by 47 U.S.C. § 227(a)(2)(A). Defendant’s State of Information and principal place of business are in the State of Florida.

**FACTUAL ALLEGATIONS**

10. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California, County of San Luis Obispo, and within this judicial district.
11. At no time did Plaintiff ever enter into a business relationship with Defendant.
12. Beginning in or about December 2014, Plaintiff began receiving text messages from Defendant on Plaintiff’s cellular telephone.
13. Specifically, Plaintiff received the following text message from Defendant on Plaintiff’s cellular telephone number ending in 8477 on February 5, 2015:
- You have prizes to claim. Call (813)515/1836
14. Plaintiff was immediately curious of the text message because the sender was unknown to Plaintiff.
15. As such, Plaintiff dialed the telephone number identified in Defendant’s text message and was connected to Defendant’s representative who tried to convince Plaintiff that Plaintiff won a prize from Defendant.
16. Upon Plaintiff’s inquiry as to the identity of Defendant, Defendant offered to send Plaintiff an e-mail proving Defendant’s identity.

1 17.Shortly thereafter, Plaintiff received an e-mail from  
2 Register@HolidayCL.com at 12:42 p.m. on February 5, 2015 from  
3 Defendant. Said e-mail described the services offered by Defendant and  
4 continued to solicit Plaintiff's business.

5 18.Defendant used an "automatic telephone dialing system", as defined by 47  
6 U.S.C. § 227(a)(1) to the artificial or prerecorded message to Plaintiff as  
7 prohibited by 47 U.S.C. § 227(b)(1)(A).

8 19.This ATDS has the capacity to store or produce telephone numbers to be  
9 called, using a random or sequential number generator.

10 20.These telephone communications constituted telephone solicitations as  
11 defined by 47 U.S.C. § 227(a)(4).

12 21.Defendant's calls constituted calls that were not for emergency purposes as  
13 defined by 47 U.S.C. § 227(b)(1)(A)(i).

14 22.Defendant's calls were placed to telephone number assigned to a cellular  
15 telephone service for which Plaintiff incurs a charge for incoming calls  
16 pursuant to 47 U.S.C. § 227(b)(1).

17 23.Plaintiff has never been in an "established business relationship" with  
18 Defendant as defined by 47 U.S.C. 227(a)(2), nor has Plaintiff ever sought  
19 Defendant's services at any point in the past.

20 24.Defendant lacked "prior express consent" to contact Plaintiff on Plaintiff's  
21 cellular telephone as described herein.

22 25.To date, Plaintiff has received approximately fifteen text messages and/or  
23 autodialed telephone calls on Plaintiff's cellular telephone from Defendant.

24 26.These telephone communications by Defendant, or its agent, violated 47  
25 U.S.C. § 227(b)(1).

#### 26 CLASS ACTION ALLEGATIONS

27 27.Plaintiff brings this action on behalf of himself and on behalf of all others  
28 similarly situated ("the Class").

1 28. Plaintiff represents, and is a member of the Class, consisting of all persons  
2 within the United States who received any text message from Defendant or  
3 their agent/s and/or employee/s to said person's cellular telephone made  
4 through the use of any automatic telephone dialing system or with an  
5 artificial or prerecorded message, which text message was not sent for  
6 emergency purposes within the four years prior to the filing of this  
7 Complaint.

8 29. Defendant and its employees or agents are excluded from the Class.  
9 Plaintiff does not know the number of members in the Class, but believes the  
10 Class members number in the hundreds of thousands, if not more. Thus, this  
11 matter should be certified as a Class action to assist in the expeditious  
12 litigation of this matter.

13 30. Plaintiff and members of the Class were harmed by the acts of Defendant in  
14 at least the following ways: Defendants, either directly or through its agents,  
15 illegally contacted Plaintiff and the Class members via their cellular  
16 telephones by using an ATDS, thereby causing Plaintiff and the Class  
17 members to incur certain cellular telephone charges or reduce cellular  
18 telephone time for which Plaintiff and the Class members previously paid,  
19 and invading the privacy of said Plaintiff and the Class members. Plaintiff  
20 and the Class members were damaged thereby.

21 31. This suit seeks only damages and injunctive relief for recovery of economic  
22 injury on behalf of the Class, and it expressly is not intended to request any  
23 recovery for personal injury and claims related thereto. Plaintiff reserves the  
24 right to expand the Class definition to seek recovery on behalf of additional  
25 persons as warranted as facts are learned in further investigation and  
26 discovery.

27 32. The joinder of the Class members is impractical and the disposition of their  
28 claims in the Class action will provide substantial benefits both to the parties

and to the court. The Class can be identified through Defendants' records or Defendants' agents' records.

33. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual Class members, including the following:

- a) Whether, within the four years prior to the filing of this Complaint, Defendant or its agents initiated any telephonic communications to the Class (other than a message made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic dialing and/or SMS texting system to any telephone number assigned to a cellular phone service;
- b) Whether Defendant can meet its burden of showing it obtained prior express consent (i.e., consent that is clearly and unmistakably stated);
- c) Whether Defendant's conduct was knowing and/or willful;
- d) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- e) Whether Defendants and its agents should be enjoined from engaging in such conduct in the future.

34. As a person that received at least one telephonic communication from Defendant's ATDS without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

35. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy



1 and Defendants will likely continue such illegal conduct. Because of the  
2 size of the individual Class member's claims, few, if any, Class members  
3 could afford to seek legal redress for the wrongs complained of herein.

4 36.Plaintiff has retained counsel experienced in handling class action claims  
5 and claims involving violations of the Telephone Consumer Protection Act.

6 37.A class action is a superior method for the fair and efficient adjudication of  
7 this controversy. Class-wide damages are essential to induce Defendants to  
8 comply with federal and California law. The interest of Class members in  
9 individually controlling the prosecution of separate claims against  
10 Defendants is small because the maximum statutory damages in an  
11 individual action for violation of privacy are minimal. Management of these  
12 claims is likely to present significantly fewer difficulties than those  
13 presented in many class claims.

14 38.Defendant has acted on grounds generally applicable to the Class, thereby  
15 making appropriate final injunctive relief and corresponding declaratory  
16 relief with respect to the Class as a whole.

#### 17 **FIRST CAUSE OF ACTION**

#### 18 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

#### 19 **47 U.S.C. § 227 ET SEQ.**

20 39.Plaintiff incorporates by reference all of the above paragraphs of this  
21 Complaint as though fully stated herein.

22 40.The foregoing acts and omissions of Defendant constitutes numerous and  
23 multiple negligent violations of the TCPA, including but not limited to each  
24 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

25 41.As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,  
26 Plaintiff and The Class are entitled to an award of \$500.00 in statutory  
27 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).  
28



42.Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## SECOND CAUSE OF ACTION

### KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.

43.Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

44.The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

45.As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

46.Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff and The Class Members pray for judgment as follows:

- Certifying the Class as requested herein;
- Providing such further relief as may be just and proper.

In addition, Plaintiff and The Class Members pray for further judgment as follows:

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**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF  
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**TRIAL BY JURY**

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: February 5, 2015

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By: /s Matthew M. Loker  
MATTHEW M. LOKER, ESQ.  
ATTORNEY FOR PLAINTIFF

KAZEROUNI LAW GROUP, APC  
245 FISCHER AVENUE, UNIT D1  
COSTA MESA, CA 92626